IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20175 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATIMABEN WD/O RAMESHCHANDRA PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR NV GANDHI for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1, 2, 3

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/12/2005

ORAL JUDGMENT

Learned advocate for the petitioner seeks permission to delete respondent Nos. 4 to 6. Permission granted.

2. Rule. Learned AGP Shri Gori waives service of notice of rule on behalf of respondent Nos.1 to 3.

3. In the presnet petition, the petitioner has challenged the decision of the respondents to levy fine for alleged unauthorized non-agricultural use of agricultural land. The respondents have also called upon the petitioner to remove the construction on the land in question. The petitioner has challenged the order dated 31.1.2004 passed by the Additional Secretary (Appeals) by which the revision application of the petitioner under section 211 of the Bombay Land Revenue Code came to be rejected.

4. Learned advocate Shri Gandhi for the petitioner has submitted that originally the land was purchased by a partnership firm which was dissolved in the year 1980 and that therefore for the continued unauthorized use of the land, the entire fine cannot be collected from the petitioner and the petitioner can be held liable only in the proportion to his land holding and no more. Shri Gandhi further submitted that the land in question cannot be treated as an agricultural land. He relied on an order passed by the Special Secretary on 25.11.98 in

support of his contention.

5. It can, however, be seen that the averment that the partnership firm was dissolved in the year 1980 has not been highlighted before the authorities. The petitioner has also not produced the order passed by the Special Secretary on 25.11.98 noted hereinabove. On both these counts, the petitioner may be given an additional opportunity of hearing before the Special Secretary. The Special Secretary in the impugned order has also observed that the land still continues to be assessed as an agricultural land. If the stand of the petitioner is that it is an non-agricultural land, the factum of the petitioner paying agricultural land revenue assessment shall also have to be borne in mind. This and all other incidental questions shall have to be reconsidered.

6. For the above purpose, proceedings are required to be remanded. The impugned order dated 31.1.2004 is therefore quashed. The proceedings shall be reheard by the Additional Secretary after giving the petitioner an opportunity of producing additional material. With these observations and directions, the petition is allowed to

the limited extent above. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)

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